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APR 06 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

LOUIS OMAR CRUZ,

Debtor.

Case No. 2:17-bk-19839-RK

Chapter 7

Adv. No. 2:17-ap-01538-RK

**ORDER AFTER TRIAL DENYING AND
DISMISSING PLAINTIFF'S CLAIMS UNDER
11 U.S.C. §§ 727(a)(2) and 727(a)(4)**

Trial

Date: April 6, 2018

Time: 9:00 a.m.

Courtroom: 1675

EDWARD M. WOLKOWITZ, Chapter 7
Trustee,

Plaintiff,

v.

LOUIS OMAR CRUZ,

Defendant.

This adversary proceeding came on for trial on April 6, 2018 before the undersigned United States Bankruptcy Judge on the complaint of Plaintiff Edward M. Wolkowitz, Chapter 7 Trustee, against Debtor Louis Omar Cruz, for denial of discharge under 11 U.S.C. §§ 727(a)(2) and 727(a)(4). Carmela T. Pagay, of the law firm of Levene, Neale, Bender, Yoo & Brill L.L.P., appeared for Plaintiff, and Plaintiff also

1 appeared for himself. Defendant Louis Omar Cruz, who is self-represented, appeared
2 for himself.

3 Having heard and considered the testimony and other evidence received at trial
4 and the oral arguments of the parties and pursuant to Federal Rule of Bankruptcy
5 Procedure 7052, stated its findings of fact and conclusions of law on the record at trial
6 and herein, the court rules and orders as follows:

- 7 1. As to Plaintiff's claim under 11 U.S.C. § 727(a)(2) in his complaint, the court
8 finds that Plaintiff has not met his burden of proving the claim by a
9 preponderance of the evidence in that the subject property transferred
10 prepetition by Defendant did not remain transferred at the time the bankruptcy
11 petition was filed and that the subject property was disclosed on Defendant's
12 original bankruptcy petition and schedules (Plaintiff's Exhibit 3, Schedule A/B:
13 Property, at page 11 of 47). *First Beverly Bank v. Adeeb (In re Adeeb)*, 787
14 F.2d 1339, 1344-1346 (9th Cir. 1986); *see also, In re Beauchamp*, 236 B.R.
15 727, 730-734 (9th Cir. BAP 1999). Although Defendant did not disclose the
16 prepetition transfer of the subject property on his original bankruptcy petition
17 and schedules (Plaintiff's Exhibit 5, Official Form 107, Statement of Financial
18 Affairs for Individuals Filing for Bankruptcy, at page 36 of 47), Defendant
19 recovered the subject property prepetition and he disclosed it as an asset on
20 his original bankruptcy petition and schedules (Plaintiff's Exhibit 3, Schedule
21 A/B: Property, at page 11 of 47). *Id.* While the court agrees with Plaintiff that
22 a belated disclosure of the transfer of the subject property on Defendant's
23 amended bankruptcy schedules (*see* Summary of Amended Schedules, etc.,
24 Docket Number 11, at page 6 of 9, amending Statement of Financial Affairs to
25 list transfer, Federal Rule of Evidence 201 (judicial notice by court of its own
26 proceedings)) does not necessarily vitiate Defendant's non-disclosure of the
27 transfer on the original petition and schedules, *see, In re Hussan*, 56 B.R. 288
28 (Bankr. E.D. Mich. 1985), the court observes and concludes that subject

1 property was recovered prepetition and accurately and completely disclosed
2 on the original petition and schedules, which indicates that the lack of
3 disclosure of the transfer itself on the original petition and schedules was not
4 material, and falls within the “recovery and disclosure” exception to 11 U.S.C.
5 § 727(a)(2) in the *Adeeb* case, and Plaintiff has not shown otherwise. *See, In*
6 *re Adeeb*, 787 F.2d at 1344-1346.

7 2. As to Plaintiff’s claim under 11 U.S.C. § 727(a)(4), the court finds that Plaintiff
8 has not met its burden of proving the claim by a preponderance of the
9 evidence in that he has not shown that Defendant’s lack of disclosure of the
10 prepetition transfer of the subject property on his original petition and
11 schedules was material. *In re Aubrey*, 111 B.R. 268, 274 (9th Cir. BAP 1990);
12 *see also, In re Adeeb*, 787 F.2d at 1344-1346. The lack of disclosure of the
13 transfer was not material because the subject property was transferred back
14 to, or recovered by, Defendant before he filed his bankruptcy petition, and
15 Defendant accurately and completely disclosed the property as an asset on
16 his original bankruptcy petition and schedules. Plaintiff has not otherwise
17 shown this lack of disclosure of the transfer of the property recovered
18 prepetition was material under these circumstances.

19 3. Accordingly, Plaintiff’s claims under 11 U.S.C. §§ 727(a)(2) and 727(a)(4) are
20 denied and dismissed with prejudice, and his complaint and adversary
21 proceeding are denied and dismissed with prejudice.

22 4. A separate form of judgment is being filed and concurrently herewith.

23 IT IS SO ORDERED.

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25 Date: April 6, 2018

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Robert Kwan
United States Bankruptcy Judge